

DECISION OF THE INTEGRITY COMMISSIONER

TOWN OF IROQUOIS FALLS

ALLEGATION: CONTRAVENTION *OF* THE TOWN OF IROQUOIS
FALLS CODE OF CONDUCT

BY: COUNCILLOR CYBOLSKY



Prepared By:

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I. EXECUTIVE SUMMARY

- [1] These reasons relate to inquiries under section 223.4(1) of the *Municipal Act, 2001*, (the “*Municipal Act*”) about Darcy Cybolsky (“Councillor Cybolsky”), an elected member of the Town Council (“Council”) for the Town of Iroquois Falls (the “Municipality”).
- [2] The Requestors in these matters alleged that Councillor Cybolsky contravened the Town of Iroquois Falls Code of Conduct (“Code of Conduct”) when he:
- a. Acted contrary to section 1 and section 7 of the Code of Conduct when he:
 - i. Was disrespectful to a member of the public on Social Media; and
 - ii. Was disrespectful to a member of the public in a newspaper article.
- [3] On March 4, 2020, our office received requests for inquiry by two members of the public. Mr. Pat Eaton and Mr. Roger Hardy (“Mr. Eaton and Mr. Hardy”) requested that we conduct an inquiry into alleged inappropriate comments made by Councillors Cybolsky and Cockburn regarding statements published in social media and in a local print newspaper, The Enterprise.
- [4] This decision pertains to the allegations regarding Councillor Cybolsky. However, some of the material evidence in this matter is also related to allegations pertaining to Councillor Cockburn and where necessary has been included herein for clarity.
- [5] Mr. Eaton had an article published in the Timmins Press. It was titled “*Iroquois Falls missing out on jobs, economic opportunities.*” The article was highly critical of the Town and more specifically Council. It was based on Mr. Eaton’s opinion or personal perception of events.
- [6] Councillor Cybolsky commented on Facebook. The post is mostly informative and related directly to the points raised by Mr. Eaton. However, Councillor Cybolsky does write:
- “This is not an article by a journalist, this is a letter from someone who complains relentlessly from a warped negative viewpoint...”***
- ...all Mr. Eaton sees are problems and he complains. We see problems too, but we try to find solutions. I wish Mr. Eaton would also be more solution orientated so that he could use his time more productively rather than spreading-half truths that make this community look bad...Despite the long list of emails sent to staff and Council by Pat Eaton and Roger Hardy, I can’t think of a single example of how they have helped move this town forward, just many examples of nitpicking on relatively simple matters...it’s far too easy to do nothing and complain about the people who are trying...”**
- [7] Of note is that Mr. Hardy is included in Councillor Cybolsky’s Facebook post but not in the article in The Enterprise.

- [8] On February 2, 2020, Councillor Cybolsky wrote to Mr. Eaton and advised him of that a further response to his letter would be forthcoming in an article in The Enterprise. Councillor Cybolsky also copied his intended response to Mr. Eaton. It was then published on February 6, 2020.

Findings

- [9] The Code of Conduct imposes a positive duty on Councillors to conduct themselves in a way that enhances the reputation of Council and the Town. It also requires individual members to avoid confrontation and imparts a duty on Council as a whole to protect the image of the corporation.
- [10] When Councillor Cybolsky made the comments about Mr. Eaton and Mr. Hardy on social media and about Mr. Eaton in a newspaper, he was not working collectively with Council. He was acting as an individual member of Council. He had a duty to take the higher ground and not get into the mud with Mr. Eaton and Mr. Hardy. This was inappropriate.
- [11] In both the social media post and the newspaper article written by Councillor Cybolsky, his comments were factual and do not rise to the level necessary to be considered a contravention of section 7 of the Code of Conduct.
- [12] This finding of misconduct should not be seen in any way to exonerate either Mr. Eaton or Mr. Hardy in their own conduct. What Councillor Cybolsky and Councillor Cockburn said was accurate in that the conduct of Mr. Eaton and Mr. Hardy bordered on harassment of staff and did inappropriately monopolize their time. The issue is that as Councillors, they had a duty to behave better than Mr. Eaton and/or Mr. Hardy and work collectively with Council to address these issues. Put differently, the response, if any, ought to have been made by Council as a whole if, as a group, they decided the communication merited any response.

II. LEGISLATIVE FRAMEWORK

- [13] Under section 223.4(1)(a) of the *Municipal Act*, Council, a member of Council or a member of the public may make a request for an inquiry to the Integrity Commissioner about whether the member has contravened the Code of Conduct applicable to that member.
- [14] The *Municipal Act* requires that municipalities adopt a Code of Conduct.
- a. **Section 1 of the Code of Conduct reads in part:**

1. *“We, the Council Members of the Corporation of the Town of Iroquois Falls, are committed to discharging our duties conscientiously...we are held to a higher standard of behavior and conduct...we will act...in a way that...enhances the role and image of Council for the Town of Iroquois Falls, and local government generally...”*

1.1 *“...conflict...among Members...and members of the public adversely affects the Municipality’s reputation and is to be avoided...Council has a strong role to protect and promote the Municipality and its reputation...”*

b. Section 7.2 of the Code of Conduct states:

A Member shall not use indecent, abusive or insulting words, tone or expressions toward any other Member, any municipal staff or any member of the public.

c. Section 8.2 of the Code of Conduct states:

Members shall acknowledge and respect the fact that staff carry out directions of Council, through senior staff, including but not limited to the treasurer, clerk, director of public works, and administer the policies of the Municipality. No Member shall perform, direct or attempt to undermine the duties of any staff person or Officer except in accordance with the Municipality’s procedural by-law.

[15] When a matter is referred to us, we may then conduct an inquiry in accordance with the Municipality’s Integrity Commissioner Inquiry Protocol and, upon completion of the inquiry, we may make recommendations to Council on the imposition of penalties.

III. THE REQUEST

[16] The requests before us were properly filed and in accordance with the *Municipal Act* and the relevant policies and procedures for the Town of Iroquois Falls.

[17] The Requestors in these matters alleged that Councillor Cybolsky contravened the Code of Conduct when he:

- a. Acted contrary to section 1 and section 7 of the Code of Conduct when he:
 - i. Was disrespectful to a member of the public on Social Media; and
 - ii. Was disrespectful to a member of the public in a newspaper article.

IV. THE INQUIRY PROCESS

[18] The responsibilities of the Integrity Commissioner are set out in section 223.3(1) of the *Municipal Act*. On March 1, 2019, section 223.2 of the *Municipal Act* was amended, and

municipalities were required to adopt a Code of Conduct. Further, municipalities were to appoint an Integrity Commissioner who is responsible for the application of the Code of Conduct. Complaints may be made by Council, a member of Council or a member of the public to the Integrity Commissioner for an inquiry about whether a member has contravened the Code of Conduct that is applicable to that member.

[19] After receiving the complaints, we followed the inquiry process as set out in the Integrity Commissioner Inquiry Protocol. We did a preliminary review of each complaint which resulted in the decision to conduct an inquiry into the matters.

[20] Gil Hughes and Sean Sparling, professional investigators with Investigative Solutions Network (ISN), were assigned as an agent of the Integrity Commissioner to carry out an investigation into the Requestors allegations. The inquiry followed the process outlined in section 5 of the Integrity Commissioner Inquiry Protocol which included reviewing the available evidence, interviewing the Requestors, witnesses and Councillor Cybolsky.

[21] The conclusions we arrived at with respect to these matters are based upon the standard of a balance of probabilities. Balance of probabilities is a civil burden of proof, meaning that there is evidence to support the allegation that the comments or conduct "more likely than not" [50.1%] took place, and that the behaviour is a breach of the Township's Code of Conduct. As required, assessments of credibility have been made. These assessments are based on:

- whether or not the individual had first-hand knowledge of the situation,
- whether or not the individual had an opportunity to observe the events
- whether or not the individual may have bias or other motive,
- the individual's ability to clearly describe events
- consistency within the story
- the attitude of the individual as they are participating
- any admission of dishonesty¹

V. THE FACTS

[22] Mr. Eaton and Mr. Hardy alleged that both Councillor Cybolsky and Councillor Cockburn contravened the Code of Conduct when they made disrespectful remarks in social and/or print media about Mr. Eaton and Mr. Hardy.

[23] The allegations in this event span several dates and end with an article published by Councillor Cybolsky in The Enterprise on February 6, 2020. The following is a chronology

[1]

¹ *Faryna v. Chorny* (1951), [1952] 2 D.L.R. 354 (B.C.C.A.), at Para 10, 11.
Alberta (Department of Children and Youth Services) v. A.U.P.A. (2009), 185 LAC (4th) 176 (Alta.Arb.)

of these events with a summary of the salient points. On most occasions the email sent from Mr. Eaton were copied to all members of Council.

January 20, 2020 – Email from EATON to BELHUMEUR

- *“...concerning budget deliberations, do you have a draft budget ready for review by council and the taxpayers? I would think it to be essential so it can be reviewed...not to mention the requirement under the Municipal Act of open and transparency. It appears that there seems to be a rush to get this budget done. Other municipalities have had deliberations before now and have open forums where taxpayers can without submission or delegation ask questions of mayor and council in a public forum...”*
- *“...is there any plans even after the budget has been established and presented for taxpayers to address mayor and council in open forum?”*
- *“Do members of council review the corporations quarterly expenditures for the past fiscal year to try and find savings or do they just look at submissions (wish list) by department heads?...”*

January 21, 2020 – BELHUMEUR response to EATON

- *“A SurveyMonkey questionnaire and Public Consultation is to provide the residents with an opportunity to give feedback on levels of service for budgetary considerations.”*

January 21, 2020 – EATON to BELHUMEUR

- *“...I am looking for answers to my questions not what a SurveyMonkey questionnaire can do. I find your answer very disrespectful in responding to myself as a taxpayer of this community. My questions were quite simple and would be easy enough to provide an answer...”*

January 22, 2020 – COCKBURN to EATON

- *“...first off, there is nothing disrespectful about Julie’s response. Your claim is grossly false. I’m sure you are familiar with the definition of disrespectful so I won’t spell it out for you.*
- *“...do not make false claims of this magnitude against our staff. Unwanted and unsubstantiated claims and correspondence of this nature toward staff is bordering on harassment...”*

January 22, 2020 – EATON to COCKBURN

- *“...I totally disagree with you! My questions were simple questions to answer rather than the ones I received...if you think it was harassment then I strongly suggest to you as a councilor responsible for this municipality*

that you contact the O.P.P. to have me charged...I feel what you wrote is inappropriate and from observation I no longer am sure who you are representing...so Dave again please make the call to the O.P.P. so we can clear the air..."

January 22, 2020 – COCKBURN to EATON

- *"...the tone of your emails to our staff is inappropriate, non constructive and in my personal opinion, abrasive and condescending and yes bordering on harassment.*
- *You're constant nonconstructive, constant complaint is wasting our staff's time. This fact speaks much more to your character than mine..."*

[24] On January 27, 2020, Mr. Eaton, authored a letter to the editor of the Timmins Press. It was titled "*Iroquois Falls missing out on jobs, economic opportunities.*" The following are highlights from this article:

- *"This afternoon (Jan 25th) I had a conversation with an individual who tried to bring a new business to Iroquois Falls...a branch of AFM Industries from Oshawa, Ont..."*
- *They approached the Town of Iroquois Falls for assistance to get established but the town put up so much red tape and road blocks...now establishing itself, you guessed it, in the city of Timmins...*
- *I know another gentleman that wants to relocate his business, innovative electronic components from Sudbury to Iroquois Falls. Speaking recently with his father, the town has done little to assist and develop this business either.*
- *...the question that needs to be asked is why Iroquois Falls is missing out on some of these opportunities?*
- *Why can other communities attract these new businesses and jobs while luring them away from Iroquois Falls? Those questions need to be answered by our municipal leaders because there is a dormant economic development committee, that hasn't convened in close to a year, and an economic development officer on staff...who should be seeking opportunities and opening doors.*
- *Why are we discouraging development?..."*

[25] On January 28, 2020, Councillor Cybolsky wrote a commentary on Facebook. This commentary is essentially the same as a later article in The Enterprise, with some differences. The following are the highlights of the Facebook article. The article is mostly informative and relates directly to the points raised by Mr. Eaton. Only the impugned/derogatory comments have been included in this report.

- *“...we haven’t seen anything to substantiate the claims in Mr. Eaton’s letter to the editor...This is not an article by a journalist, this is a letter from someone who complains relentlessly from a warped negative viewpoint...”*
- *...all Mr. Eaton sees are problems and he complains. We see problems too, but we try to find solutions. I wish Mr. Eaton would also be more solution orientated so that he could use his time more productively rather than spreading-half truths that make this community look bad...Despite the long list of emails sent to staff and Council by Pat Eaton and Roger Hardy, I can’t think of a single example of how they have helped move this town forward, just many examples of nitpicking on relatively simple matters...it’s far too easy to do nothing and complain about the people who are trying...”*

[26] On February 2, 2020, Councillor Cybolsky then wrote to Mr. Eaton and advised him of his intent to further respond to his letter with an article in The Enterprise. He also copied his intended response to Mr. Eaton. It was then published on February 6, 2020.

[27] The contents of The Enterprise article have not been repeated in this report. It is essentially the same article as the Facebook commentary, except there are no references to Mr. Hardy and some of the language such as “*warped*” has been removed. The same criticisms of Mr. Eaton are included in The Enterprise article.

[28] As expected, the Facebook article published by Councillor Cybolsky generated a considerable number of public comments. Some of the comments were positive and some were negative. One comment said Mr. Eaton was known to be honest, another accused Councillor Cybolsky of slander, and others supported Councillor Cybolsky’s viewpoint.

[29] On January 28, 2020, Councillor Cockburn responded to the comments on Facebook. The following are highlights only:

- *“Thanks to my colleague Darcy for writing this. The source of the recent letter in the Timmins Press needs to ensure such documents and memos are fact based. Not telling the truth in order to slander your home town speaks to their character more than those they were trying to call out. There is absolutely nothing to this letter to the Timmins Press that is substantiated by facts. Mere gossip and self promotion to make us all look bad. This individual is a chronic complainer who themselves does very little to volunteer their time in the community or personally sponsor local events or initiatives...”*

[30] Both Councillor Cybolsky and Councillor Cockburn did not separate themselves in the articles personally from their role as elected officials. In fact, Councillor Cybolsky signed The Enterprise articles as “Darcy Councillor Cybolsky – Iroquois Falls Town Councillor”.

- [31] Councillor Cybolsky and Councillor Cockburn intended for their comments to be taken as coming from their office as members of Council. There is also no evidence [Council resolution/municipal policy] to support that they were acting on the direction of Council. They essentially took these actions on their own.
- [32] A substantial amount of communications from both Mr. Eaton and Mr. Hardy have been received by the Town. There is a pattern of disrespectful remarks related to the actions/inactions of staff and/or Council as well as criticisms of decisions Council has made that they disagree with. They have been challenging for staff or Council to deal with and they have diverted staff operations due to the volume of their correspondence.
- [33] Mr. Eaton and Mr. Hardy have been described as constant complainers by Councillor Cybolsky and Councillor Cockburn.
- [34] A review of a large sample of the correspondence from Mr. Eaton and Mr. Hardy [we did not review all of their correspondence in this investigation] reveals that their communication is predominantly of a negative, critical and complaining nature. We did not find any evidence that positive feedback nor any form of constructive solution has been given to the Town by either Mr. Eaton or Mr. Hardy.
- [35] Councillor Cybolsky used words like nitpicking and half-truths to describe Mr. Eaton's article and other correspondences from him. The Investigator reported that he had seen enough of Mr. Eaton's communications to agree that he is "nitpicking" staff and Council. As an example, in one of his many correspondences he wrote to them, Mr. Eaton complained about the grass being too long around a sign on the highway into the Town.
- [36] Both Councillor Cybolsky and Councillor Cockburn said that Mr. Eaton told "half-truths" or was untruthful in his article to the Timmins Press.
- [37] Councillor Cybolsky advised that he corrected Mr. Eaton's comments about the assistance the Town gave to the individual Mr. Eaton referred to in his article.
- [38] In summary, the following is a list of the descriptions attributed to Mr. Eaton and Mr. Hardy by Councillor Cybolsky in his Facebook post and supported by Councillor Cockburn:
1. Constant complainers.
 2. Warped viewpoints, and
 3. Untruthful.
- [39] The Town has a policy on how complaints are handled. Their policy does provide response timelines for the handling of complaints. It does not address questions/queries and/or frivolous and vexatious complaints.

[40] The Town does not have a level of service policy outlining response times for questions/queries.

[41] Within the past few years, Council prohibited an individual from contacting staff and individual members of Council directly for fear of further victimization of staff by this person. This individual was identified as being litigious in the extreme and very much a nuisance complainer. Of significance is that the individual was found to have harassed a member of staff.

[42] No such action has been taken by Council with respect to Mr. Eaton and Mr. Hardy.

VI. THE ISSUE

[43] We considered:

Inappropriate Comments About Ratepayers in the Media/on Social Media

- a. whether Councillor Cybolsky was abusive or insulting in his email exchange with Mr. Eaton;
- b. whether Councillor Cybolsky had the authority to respond to Mr. Eaton's email;
- c. whether Councillor Cybolsky response was factual;
- d. whether Councillor Cybolsky's post on social media or in the newspaper was abusive or insulting;
- e. whether Councillor Cybolsky had the authority to make the post on social media or in the newspaper; and
- f. whether Councillor Cybolsky's actions were malicious, confrontational, or harmful to the reputation of the Town.

VII. THE OPINION

[44] The facts in this circumstance are quite clear. They are well documented and do not require tests of credibility. We considered at great length, if Mr. Eaton and Mr. Hardy are chronic complainers and if Mr. Eaton had misrepresented the truth in this article to the Timmins Press, is it then permissible for elected officials to counter these points publicly and/or correct these false assertions by Mr. Eaton or Mr. Hardy?

- [45] We find that Councillor Cybolsky and Councillor Cockburn are permitted to do this providing they follow the rules enunciated in the Code of Conduct on civil behaviour and maintaining a high degree of professional conduct.
- [46] It is evident that Mr. Eaton and Mr. Hardy submit an extraordinary number of criticisms and queries to the Town. It is further evident that they have an unrealistic expectation of their interactions with staff and Council.
- [47] Councillor Cybolsky used words like nitpicking and half-truths to describe Mr. Eaton's article and other correspondences from him. There is sufficient evidence in the communications Mr. Eaton sends to the Town to validate he is "nitpicking" staff and Council.
- [48] Mr. Eaton and Mr. Hardy seem to believe they are entitled to direct Town staff and are entitled to an unrealistic level of access to information outside of official means. For example, they demand staff responses or actions on short notice [and with no regard for existing directions or priorities set by Council or statute which, in fairness they could not know, but should expect] and escalate, unreasonably, if their unilaterally imposed timelines are not met. Staff and Council have shared enough communications from both individuals during this inquiry to find that they are chronic complainers, monopolize staff's time, and at times, are disrespectful towards staff.
- [49] Mr. Eaton cannot expect to interact with staff in this manner without consequence. To then complain about being challenged on his own conduct is a demonstration of the sense of entitlement he has in his interactions with staff. Had the Code of Conduct applied to Mr. Eaton equally as it does to Councillor Cockburn, we would have found Mr. Eaton had engaged in misconduct directed at Ms. Belhumeur.
- [50] Mr. Eaton and Mr. Hardy are quickly approaching the line of what is an acceptable exercise of their democratic rights versus harassment. They are crossing the line into a similar type of conduct that resulted in Council prohibiting another individual's ability to communicate directly with staff and Council.
- [51] We find that Councillor Cybolsky's comments on social media or in the newspaper did not meet the level necessary to substantiate a contravention of section 7 of the Code of Conduct.
- [52] We find that Councillor Cockburn violated section 1 of the Code of Conduct by failing to maintain a higher standard of conduct.
- [53] This finding of misconduct should not be seen in any way to exonerate either Mr. Eaton or Mr. Hardy in their own conduct. What Councillor Cybolsky and Councillor Cockburn said was accurate in that Mr. Eaton and Mr. Hardy's conduct is bordering on harassment

of staff and does inappropriately monopolize their time. As a member of Council, Councillor Cybolsky had a duty to behave better than Mr. Eaton and Mr. Hardy and to work collectively with Council to address these challenging issues.

VIII. CONCLUSION

[54] With respect to the contravention of section 1 of the Code of Conduct we are not seeking a penalty. We find that Councillor Cybolsky's intentions were not malicious and believe that this public report is enough of a penalty.

[55] We also recommend that Council:

- a. Review their Workplace Violence and Harassment Policy to ensure that it clearly explains that disrespectful email/correspondence and/or large volumes from a single ratepayer may be harassment.
- b. Update their Accountability and Transparency Policy to clearly explain how the municipal operation will be accountable and transparent to the public.
- c. Adopt a Media and Social Media Policy for Council to clearly spell out who can respond to questions from the media, respond to comments on social media etc.
- d. Adopt a Feedback Policy to explain to members of the public how feedback will be processed and tracked by the Town.
- e. Adopt an Expected Behaviour Policy to explain to the public how Council expects them to behave – similar to the Code of Conduct for Council.
- f. Strike a Communications Committee consisting of two members of Council and the IC to consider all correspondence from Mr. Eaton and Mr. Hardy and make recommendations to Council as to which, if any, will be responded to

DATED February 28, 2021